

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Instream Lease Application) DETERMINATION and
IL-1337, Certificates 64753, 55641, 35601,) FINAL ORDER ON PROPOSED
52909, 67109, and 75935, Wasco County) INSTREAM LEASE

Authority

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Eugene M. Underhill
82541 Dufur Valley Rd.
Dufur, OR 97021

Lessee

The Freshwater Trust (TFT)
65 SW Yamhill St., Suite 300
Portland, OR 97204
natasha@thefreshwatertrust.org

Findings of Fact

1. On July 17, 2013, TFT and Eugene Underhill filed an application to renew instream lease IL-68, involving all of Certificates 55641, 35601, and 75935 and a portion of Certificates 64753, 52909 and 67109.
2. During the review process, the Department identified that the Final Order approving the lease, as evidenced by Special Order Volume 74, Page 839, did not account for the losing reach on Fifteenmile Creek in the description of the instream use. Therefore, the Department has assigned the application a new lease number, IL-1337, to differentiate it from the original lease.
3. In addition, on August 27, 2013, TFT requested to change the period water is protected instream under Certificates 75935, 67109, 52909 and 35601 to April 1 through October 29.
4. The portion of the first right to be leased is as follows:

Certificate: 64753 in the name of Gene Underhill (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County, and said decree entered of record at Salem, in the Order Record of the Water Resources Director, in Volume 7, at Page 406)

Use: IRRIGATION of 18.6 acres

Priority Date: 1856

Quantity: **Rate:** 0.46 Cubic Foot per Second (CFS) after July 1st
Volume: 55.8 Acre-Feet (AF)

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Limit: to one acre-foot per acre during any 30 day period up to July 1st and ¾ acre-foot per acre during any 30 day period thereafter, not to exceed 3.0 acre-feet per acre during the irrigation season of each year. The rate of flow shall not exceed ONE-FORTIETH cubic foot per second per acre after July 1st.

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	33	NE SW	SIGMAN DITCH – 2480 FEET NORTH AND 2250 FEET EAST FROM THE SW CORNER OF SECTION 33
1 S	13 E	WM	34	SW NW	CREEK – 1620 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tract	Acres
1 S	13 E	WM	33	SW NE	2	9.0
1 S	13 E	WM	33	SE NW	2	6.5
1 S	13 E	WM	33	NE SW	2	1.5
1 S	13 E	WM	33	NW SE	2	1.6

- Certificate 64753 does not describe the rate at which water can be applied. The Fifteenmile Creek Decree appears to indicate that the rate applied during the irrigation season may be variable in order to achieve the appropriate head of water but also states that the irrigation rate shall not exceed 1/40th of CFS per acre after July 1st, except in case of rotation.
- The second right to be leased is as follows:

Certificate: 55641 in the name of William Hulse (confirmed by decree of the Circuit Court of the State of Oregon for Wasco County, and said decree entered of record at Salem, in the Order Record of the Water Resources Director, in Volume 7, at Page 406)

Use: IRRIGATION of 8.0 acres

Priority Date: 1885

Quantity: **Volume:** 24.0 Acre-Feet (AF)

Limit: 3.0 acre-feet per acre during the irrigation season of each year, if available at the original point of diversion (Strachan Ditch)

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	32	NW SE	1720 FEET NORTH AND 1830 FEET WEST FROM THE SE CORNER OF SECTION 32

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
1 S	13 E	WM	34	SW NW	37	260 FEET SOUTH AND 690 FEET WEST FROM THE NE CORNER OF HENDERSON DLC 37

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Gov't Lot	Acres
1 S	13 E	WM	34	NW NW	5	8.0

- Certificate 55641 describes the annual duty of the right as 3.0 acre-feet (AF) per acre; however the Fifteenmile Creek Decree further describes the duty in the following 30-day

volumes: Prior to July 1, the diversion is restricted to 1.0 AF per acre in any 30-day period. From July 1st, the diversion is limited to ¾ AF per acre in any 30-day period.

8. Certificate 55641 does not describe the rate at which water can be applied. The Fifteenmile Creek Decree appears to indicate that the rate applied during the irrigation season may be variable in order to achieve the appropriate head of water but also states that the irrigation rate shall not exceed 1/40th of CFS per acre after July 1st, except in case of rotation.

Certificate	Max Rate After July 1 st
55641	0.2 CFS

9. The third right to be leased is as follows:

Certificate: 35601 in the name of William L. Hulse (perfected under permit S-29637)
Use: IRRIGATION of 22.3 acres
Priority Date: April 21, 1964
Quantity: **Rate:** 0.26 Cubic Foot per Second (CFS)
Volume: 66.9 AF
Limit: shall be limited to 1/80th cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year
Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	32	SW SW	POD #1 - 870 FEET NORTH AND 1060 FEET EAST FROM THE SW CORNER OF SECTION 32
1 S	13 E	WM	32	SE SW	POD #2 - 980 FEET NORTH AND 1410 FEET EAST FROM THE SW CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	31	SE SE	3.8
1 S	13 E	WM	32	NE SW	0.7
1 S	13 E	WM	32	SW SW	15.4
1 S	13 E	WM	32	SE SW	2.4

10. The portion of the fourth right to be leased is as follows:

Certificate: 52909 in the name of Gene Underhill (perfected under permit S-41261)
Use: IRRIGATION of 5.9 acres
Priority Date: November 26, 1976
Quantity: **Rate:** 0.07 Cubic Foot per Second (CFS)
Volume: 17.7 AF
Limit: shall be limited to 1/80th cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year
Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	32	SW SW	POD #1 - 900 FEET NORTH AND 1010 FEET EAST FROM THE SW CORNER OF SECTION 32

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	32	NE SW	POD #2 – 1380 FEET NORTH AND 2250 FEET EAST FROM THE SW CORNER OF SECTION 32

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	31	NE SE	1.2
1 S	13 E	WM	31	SE SE	2.0
1 S	13 E	WM	32	NW SW	1.4
1 S	13 E	WM	32	SW SW	1.3

11. The portion of the fifth right to be leased is as follows:

Certificate: 67109 in the name of Gene Underhill (perfected under permit S-44313)
Use: IRRIGATION of 28.6 acres
Priority Date: May 19, 1977
Quantity: **Rate:** 0.35 Cubic Foot per Second (CFS)
Volume: 85.8 AF
Limit: shall be limited to 1/80th cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Gov't Lot	Measured Distances
1 S	13 E	WM	33	NE SW		4	POD #1 – 220 FEET NORTH FROM THE SW CORNER OF DLC 37
1 S	13 E	WM	34	SW NW	37		POD #2 – 260 FEET SOUTH AND 690 FEET WEST FROM THE NE CORNER OF DLC 37

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Gov't Lot	Acres
1 S	13 E	WM	33	NE NE	37		0.1
1 S	13 E	WM	33	SW NE	37	2	6.3
1 S	13 E	WM	33	SW NE	37		0.1
1 S	13 E	WM	33	SE NE	37	2	2.2
1 S	13 E	WM	33	SE NE	37		9.3
1 S	13 E	WM	34	NE NW	37		0.6
1 S	13 E	WM	34	NW NW	37		2.9
1 S	13 E	WM	34	SW NW	37		6.3
1 S	13 E	WM	34	SE NW	37		0.8

12. The sixth right to be leased is as follows:

Certificate: 75935 in the name of Gene Underhill (perfected under permit S-44313)
Use: IRRIGATION of 10.5 acres
Priority Date: May 19, 1977
Quantity: **Rate:** 0.13 Cubic Foot per Second (CFS)
Volume: 31.5 AF
Limit: shall be limited to 1/80th cfs per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year

Source: FIFTEENMILE CREEK, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	13 E	WM	33	NE SW	2480 FEET NORTH AND 2250 FEET EAST FROM THE SW CORNER OF SECTION 33

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	13 E	WM	33	SW NE	9.5
1 S	13 E	WM	33	SE NE	1.0

13. None of the Certificates requested to be leased specify the irrigation season. In addition, the Fifteenmile Creek Decree and the Basin Program do not specify a season of use. For purpose of this instream lease and based on consultation with the Department's Watermaster, an irrigation season of March 1 through October 31 shall be used to help establish when water may be leased instream.
14. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
15. The authorized POD's are above a known losing reach on Fifteenmile Creek beginning at approximately River Mile 30.5. Stream channel losses vary based on various factors (including the time of the year, ambient air temperature, total flow in Fifteenmile Creek, and other contributing factors) and can range from zero to 50 percent. Therefore, protected flows generated from this lease will be reduced immediately below each POD by 50 percent to prevent injury to downstream water users and/or enlargement of the water rights.
16. The instream use may also be conditioned to allow more or less water to be protected instream below each POD based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at each POD.
17. The instream use has been modified from the original lease application to prevent injury and enlargement and is as follows:
Fifteenmile Creek, tributary to the Columbia River

Resulting from Certificate 64753

Instream Reach #1: From the Creek POD for Certificate 64753 (as described in Finding of Fact #4) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
64753	1856	0.23	55.8	July 1 through October 29

Instream Reach #2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
64753	1856	0.12	27.6	July 1 through October 29

Resulting from Certificate 55641**Instream Reach #1:** From the POD for Certificate 55641 (as described in Finding of Fact #6) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
55641	1885	0.10	24.0	July 1 through October 29

Instream Reach #2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
55641	1885	0.05	12.0	July 1 through October 29

Resulting from Certificate 35601**Instream Reach #1:** From POD #1 for Certificate 35601 (as described in Finding of Fact #9) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
35601	4/21/1964	0.16	66.9	April 1 through October 29

Instream Reach #2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
35601	4/21/1964	0.08	33.64	April 1 through October 29

Resulting from Certificate 52909**Instream Reach #1:** From POD #1 for Certificate 52909 (as described in Finding of Fact #10) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
52909	11/26/1974	0.04	17.7	April 1 through October 29

Instream Reach #2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
52909	11/26/1974	0.02	8.4	April 1 through October 29

Resulting from Certificate 67109**Instream Reach #1:** From POD #1 for Certificate 67109 (as described in Finding of Fact #11) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
67109	5/19/1977	0.2	85.8	April 1 through October 29

Instream Reach #2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
67109	5/19/1977	0.1	42.05	April 1 through October 29

Resulting from Certificate 75935**Instream Reach #1:** From the POD for Certificate 75935 (as described in Finding of Fact #12) to River Mile 30.5

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75935	5/19/1977	0.07	31.5	April 1 through October 29

Instream Reach #2: From River Mile 30.5 to the mouth of Fifteenmile Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75935	5/19/1977	0.04	14.72	April 1 through October 29

18. Other conditions to prevent injury and enlargement are:

Within the described instream reach, stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion and within the specified stream reach from River Mile 30.5 to the mouth of Fifteenmile Creek and whether the described instream flows below River Mile 30.5 may be adjusted. If adjusted, instream flows from immediately below River Mile 30.5 to the mouth of Fifteenmile Creek may not exceed the quantities specified at each POD.

19. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
20. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right.
21. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. Transfers will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of future leases or transfers.
22. The Lessor has requested that the lease terminate on October 31, 2017. The lease may commence on the date this final order is signed.
23. The Lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2017. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (June 23 through October 29) or after the period of allowed use has begun for the water rights being leased, water shall not be used under the rights leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 29 day of August, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

*This document was prepared by Laura
Wilke and if you have any questions,
please call 503-986-0884.*

Mailing date: SEP 05 2013